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No. 243

IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

HOMER L. BRUCE ET UX, CLARA C. BRUCE, *Petitioners*

v.

J. P. KING, JR., *Respondent*

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

HOMER L. BRUCE
CLARA C. BRUCE
Pro Se

HOMER L. BRUCE
Attorney for Petitioners

YOUNG CO., HOUSTON

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Come now the above named petitioners, Homer L. Bruce and wife, Clara C. Bruce, and present this their petition for a rehearing of their petition for a writ of certiorari in the above entitled cause, and in support thereof respectfully show:

Summary of Facts

Petitioners, husband and wife, citizens of Texas, a community property law state, while in New York executed a contract between themselves under which they divided $5,800 of their community money, located in New York, so that $2,900 became the separate property of each. Under Sections 50, 51 and 56, Article 4, Chapter 14, *Consolidated Laws of New York,* and *Hutchison v. Ross,* 187 N. E. 65, 262 N. Y.

381, and many other New York decisions, the contract was valid in all respects. The wife thereafter deposited her separate $2,900 in a Texas bank. Thereafter respondent obtained a judgment against the husband and ran a garnishment on the bank. Under Texas law, if the $2,900 were the wife's separate property, it was not subject to the garnishment for the husband's debt.

Section 15, Article XVI, of the *Texas Constitution* defines a wife's separate property as that owned by her at marriage and that acquired afterward by gift, devise or descent. Articles 4613 and 4614, *Texas Revised Civil Statutes,* 1925, have a similar definition of the separate property of each. The trial court and intermediate Court of Civil Appeals held the money became the wife's separate property in New York and remained her separate property when deposited in the Texas bank. The Supreme Court of Texas, despite the Federal constitutional points hereinafter pointed out, held that the New York contract was governed by the above cited provisions of the Texas Constitution and statutes, that the contract was void, and the wife's $2,900 was community property subject to the garnishment.

Federal Constitutional Questions Involved

The decision of the Supreme Court of Texas brushes aside the following provisions of the Federal Constitution and the applicable decisions of this Court thereunder:

1. Under the New York statutes above quoted the contract was valid and effective and the right of

the wife to her separate property became vested in New York. The Court of Appeals of New York in *Hutchison v. Ross,* 187 N. E. 65, 262 N. Y. 381, in an exactly similar case involving a contract in New York between spouses of the community property country of Quebec, under whose laws they could make no valid contract between themselves, held the New York law governed and the personal property thereby transferred to the wife as her separate property became her separate property. The Supreme Court of Texas in refusing to recognize the wife's title arising in New York violated the due process clause of the Fourteenth Amendment. This action was in direct conflict with *Home Insurance Company v. Dick,* 281 U. S. 397, in which this Court reversed the Supreme Court of Texas for applying Texas law to a Mexico contract; *Aetna Life Insurance Company v. Dunken,* 266 U. S. 389, similarly reversing the Court of Civil Appeals for the Third Supreme Judicial District of Texas; *New York Life Insurance Company v. Dodge,* 246 U. S. 357, similarly reversing the Court of Appeals of Missouri, and many other cases.

2. The holding of the Supreme Court of Texas and the Texas Constitution and statutes as construed by that court, violated the due process clause of the Fourteenth Amendment by depriving petitioners of their right to contract in New York with reference to their property located in New York in accordance with the laws of New York. *New York Life Insurance Company v. Dodge,* 246 U. S. 357, 376-377.

3. Said decision and Texas Constitution and statutes as so applied violated said due process clause in that the State of Texas has thereby converted the wife's separate property obtained in New York into community property as soon as she brought it into Texas. *In re Thornton's Estate,* 33 P.2d 1, 1 Cal.2d 1, and numerous other cases.

4. Said action by the Supreme Court of Texas was directly in the face of the provision of Section 1, Article IV, of the Federal Constitution that full faith and credit shall be given in each State to the public Acts of every other State. This requires the State of Texas to give full faith and credit to Sections 50, 51 and 56, Article 4, Chapter 14, of the Consolidated Laws of New York as interpreted and applied by the Courts of New York. *Chicago and Alton Railroad v. Wiggins Ferry Company,* 119 U. S. 615, 622. As shown by *Hutchison v. Ross, supra,* and many other New York cases cited in our original petition, the New York courts recognize the validity of the contract between petitioners under said Sections 50, 51 and 56.

5. Said action by the Supreme Court of Texas was directly in the face of the mandate of Section 1 of the Fourteenth Amendment that no State shall make or enforce any law which shall abridge the privileges of *citizens of the United States.* That provision applies to any attempt by a State to abridge the privileges of its own citizens which they have *as citizens of the United States. Colgate v. Harvey,* 296 U. S. 404, 428-430. One of these privileges of a Federal

citizen is to conduct his affairs in another State in accordance with the laws of that State without hindrance by any law of his own State. The said Section 15, Article XVI, of the Texas Constitution as applied in this case took this privilege away from these petitioners.

Importance of This Case

This case, in view of the opinion and action of the Supreme Court of Texas, has taken on an importance far transcending the private interests of petitioners and respondent. The Supreme Court of Texas has stated that the State of Texas may control the actions of its citizens in contracting outside the State of Texas. It has held that the petitioners may not contract in New York with reference to their New York property in accordance with New York law. If the State of Texas may do that in this instance, it may by statute or court decision throw any other kind of restriction around actions of its citizens while in other States. Anyone contracting in one State with a citizen of another State must determine at his peril whether the law of such other State will allow its citizen so to contract. This is an entirely novel doctrine. The action by this Court in denying our petition for a writ of certiorari lends a color of approval by this Court to that doctrine or at least raises a serious question in the minds of all as to what position this Court will take if and when it reviews on its merits a case involving these points.

The decision of the Supreme Court of Texas has

attracted widespread attention. In addition to personal inquiries from numerous attorneys, we have had extended correspondence with the Harvard Law Review and with the publishers of American Law Reports, Annotated, in reference to the basis upon which the Supreme Court of Texas could pitch its decision.

We respectfully submit that the decision of the Supreme Court of Texas is fundamentally wrong, is a most novel departure from all established jurisprudence, violates numerous provisions of the Federal Constitution, and is of such wide importance that this Court should review its action on the merits of this case.

Conclusion

Accordingly, we respectfully request this Court to grant our petition for a writ of certiorari and hear this case on its merits.

We also renew our request that, if our petition is granted, this case be placed upon the summary docket.

HOMER L. BRUCE
CLARA C. BRUCE
Pro Se
HOMER L. BRUCE
Attorney for Petitioners

I, Homer L. Bruce, Attorney for the above named petitioners, do hereby certify that the foregoing petition for a rehearing of their petition for a writ of certiorari is presented in good faith and not for delay.

HOMER L. BRUCE
Attorney for Petitioners